FINANCIAL CONDUCT AUTHORITY

Notice of Undertaking

ETA Services Ltd

Summary

ETA Services Ltd (ETA) has made changes to a term in its Cycle Insurance Policy. The policy is underwritten by UK General Insurance Limited (UKGIL), on behalf of Great Lakes Insurance SE since 1 April 2016 and on behalf of Ageas Insurance Limited between 1 April 2012 and 31 March 2016.

ETA has given us an undertaking, under the Consumer Rights Act 2015 (the CRA), in relation to a term that sets out the firm's right to exclude a claim where an approved lock has not been used in certain circumstances. This is because we had concerns that the term was not sufficiently transparent, as the term contradicted another term in the policy. As a result, we were concerned that consumers may be confused about whether they were covered under the policy, and therefore whether they could make a claim.

We summarise our concerns and the action the firm has taken below.

Why did we have concerns?

There were two terms in the policy which in our view contradicted each other.

The first term stated cover would not be provided in the event of theft "where the bicycle has not been secured through its frame using an approved lock". However, the second term relating to the theft of bicycles left unattended in communal buildings stated that cover would not be provided unless "the bicycle has been secured through its frame to an immovable object".

In our view, the second term did not specify that an approved lock was needed, and contradicted the first term. This could have caused confusion to consumers about the circumstances in which they needed to use an approved lock to ensure they were covered by the policy.

We also had concerns that ETA had rejected claims by consumers because an approved lock had not been used for bicycles left in communal buildings.

What has the firm done?

ETA has agreed that the relevant terms were not as clear as they could have been.

The firm, together with UKGIL, has reviewed the terms. ETA has told us that contracts entered into since 1 April 2019 contain new terms which are clear that consumers need to secure their bicycles using an approved lock when left in communal buildings, in order to be covered under the policy. This includes new consumers and renewing consumers.

In addition, the firm has told us that renewing consumers will be provided with information about the change in their renewal documentation. Chats and call scripts will also be updated to help bring the changes to the attention of consumers.

ETA has confirmed that existing consumers will have their claims assessed for theft of their bicycles from communal buildings without the use of an approved lock being a factor in considering the claims.

The firm has told us that the terms have been used in their policies since 2012. ETA and UKGIL have reviewed past claims and redress has been paid to five consumers where claims were rejected because the consumers did not use an approved lock when securing their bicycles in communal buildings.

The firm has fully cooperated with us in resolving our concerns.

What does this mean for consumers?

The change that ETA has made should ensure that consumers are provided with greater clarity and certainty about the circumstances in which an approved lock must be used to secure their bicycles.

Until the new term is in use, the firm has committed to applying the existing wording in a fair way.

Undertaking from ETA Services Ltd

ETA Services Ltd has given this undertaking to the FCA under the Consumer Rights Act 2015 (the CRA) in respect of its Cycle Insurance Policy Wording which applied to contracts entered into between 1 October 2015 and 31 March 2019. The policy is underwritten by UK General Insurance Limited (UKGIL), on behalf of Great Lakes Insurance SE since 1 April 2016 and on behalf of Ageas Insurance Limited between 1 April 2012 and 31 March 2016.

ETA Services Ltd Cycle Insurance Policy Wording

Term 5 of the "Exclusions applicable to theft and damage" contained in the relevant Cycle Insurance Policy Wording stated:

*"5. Theft where the **bicycle** has not been secured through its **frame** using an **approved lock**."*

Term 8 stated:

*"8. Theft or attempted theft of the **bicycle(s)** whilst left **unattended** at any time unless:*

a) *The **bicycle** is secured through its **frame** by an **approved lock** to an **immovable object**, or;*

b) *It is in a **building** classified as **a) house, b) garage/outbuilding, c) flat, d) room, e) shed,***

*where all external doors and windows are locked and theft is occasioned by a **forcible and/or violent entry**.*

*In this instance, the bicycle must be stored **out of sight***

c) *It is in a **building** classified as*
f) communal hallway,
g) communal outbuilding,
h) purpose-built bike container

*where all external doors and windows are locked and the **bicycle** has been secured through its **frame** to an **immovable object.***

*In this instance, the bicycle must be stored **out of sight."***

Applying the CRA

We considered the transparency of terms 5 and 8(c) in light of the CRA and relevant case law.

Under Section 68(1) of the CRA, firms are required to "ensure that a written term of a consumer contract….*is transparent".* Under Section 64(3) of the CRA, a term is transparent if *"….it is expressed in plain and intelligible language and (in the case of a written term) is legible."*

In our view, terms 5 and 8(c) were likely to be considered insufficiently transparent under the CRA as it was not clear when the consumer needed to use an approved lock. Term 5 of the policy appeared to exclude any theft where the bicycle had not been secured with an approved lock. However, term 8(c) referred to the bicycle being secured to an immovable object, with no reference to the use of an approved lock. In our view, the terms appeared to contradict each other. This could have caused confusion to consumers about when they needed to use an approved lock to ensure they were covered by the insurance. Under Section 69(1) of the CRA, where a contract term in a consumer contract could have different meanings then it must be applied in the way that is most favourable to the consumer.

How the term has been changed

ETA Services Ltd has informed us that the wording was included in the policy since 2012. The firm has also informed us that the terms had been applied to reject claims where an approved lock had not been used in the circumstances listed in term 8(c).

The firm has agreed that the relevant terms were not as clear as they could have been under the CRA.

New and renewed contracts entered into since 1 April 2019 contain new terms which clarify that theft or attempted theft from communal buildings where the bicycle is not secured using an approved lock is excluded.

ETA Services Ltd has confirmed that it will not reject claims for theft in buildings classified as communal hallways, communal outbuildings and purpose-built bike containers as a result of the consumer not using an approved lock in existing policies that contain the unclear wording.

Other information

The firm was fully cooperative in providing this undertaking.

Undertaking published 26 June 2019

Legal information

As a Regulator, we, the Financial Conduct Authority (FCA), can challenge firms using terms that we view as not being transparent under Part 2 of the Consumer Rights Act 2015 (the CRA). We review contract terms that we come across in our supervision of firms. This includes contract terms that are referred to us by consumers, enforcement bodies and consumer organisations. This has led to ETA's undertaking to replace the term that we consider is likely not to be transparent.

The FCA has a duty under Schedule 3 of the CRA to notify the Competition and Markets Authority (the CMA) of the undertakings we receive. The CMA may publish details of these undertakings, which it puts on www.gov.uk. We also publish the undertakings on our website. Both publications will name the firm and identify the specific term and the part of the CRA that relate to the term's transparency.

Even if firms have not given an undertaking or been subject to a court decision they should remain alert to undertakings or court decisions concerning other firms as part of their risk management. These will be of potential value in showing the likely attitude of the courts, the FCA, the CMA or other regulators to similar terms or terms with a similar effect.

Ultimately only a court can determine the fairness or transparency of a term and, therefore, we do not recommend terms that have been revised by a firm to address our concerns as being definitely fair or transparent. We cannot approve terms for the purposes of the CRA; it is for firms to assess the fairness and transparency of their terms and conditions under the CRA and in the context of the product or service in question.

It is important to bear in mind that wording that is fair or transparent in one agreement is not necessarily fair or transparent in another. Where we accept an undertaking given to us from a firm to revise a term, this means that, on the evidence currently available we consider the term to be improved enough that further regulatory action is not required.